Supreme Court of the United States

October Term, 1924

No. 308

MODERN WOODMEN OF AMERICA,
Petitioner,

vs.

JENNIE VIDA MIXER.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEBRASKA

SUPPLEMENTAL BRIEF FOR PETITIONER

The question whether payment of assessments shall cease at the expiration of seven years' unexplained absence of the member or shall continue to be paid for the period of the expectancy of life of the member is one which affects the financial interest of every member of the society.

The purpose of this supplement to the original brief is to present some additional reasons in support of the position taken by petitioner in its original brief.

In the case of *Royal Arcanum vs. Green*, 237 U. S. 531, Mr Chief Justice White, speaking for the court, stated that an assessment which was one thing in one state and another thing in another state would, in practical effect, amount to no assessment at all. In the Green case the increased rate of assessment was involved, and the fact that the rate should be uniform and should apply to all members alike

was one of the moving causes for holding that the decision of the home state of the Royal Arcanum was controlling. If the various states should decide this question for themselves, other than the home state of the corporation, the different views of the courts prevailing would result in one assessment in the home state of the corporation and another in the state in which the litigation arose.

Petitioner's By-Law, known and referred to as Section 66, provides that seven years absence will not be evidence of death and that the beneficiary may not maintain an action until the end of the expectancy of life of the member, according to the National Fraternal Congress Table of Mortality. In the case of *Steen vs. Modern Woodmen of America*, 296 Ill. 104, in which was involved the validity of Section 66, and which judgment and opinion are pleaded as a defense in this case, the member disappeared in 1910 and his expectancy of life, according to the above named table of mortality, figured from the date of his disappearance and as stated in the opinion (Rec., p. 20), was 29.9 years. That is, in order to mature Steen's certificate he, or some one for and in his behalf, would be required to pay assessments for the period of 29.9 years. Each member of the Society, no matter where situated, is interested in the payment of Steen's assessments for that period of time.

In this case Mixer, the member, at the time of his disappearance in 1911 was fifty-two years of age (Rec., p. 5), and his expectancy of life according to the National Fraternal Congress Table of Mortality, figuring as of the date of his disappearance, was 20.7 years. If the payments of assessments are to be uniform, he, or some one in his behalf, should be required to pay assesments during his expectancy of life, to-wit, for the period of 20.7 years.

According to the decision of the Nebraska Supreme Court it was not necessary to pay assessments after the action was commenced. The question of whether death losses should be paid at the expiration of seven years from

the disappearance of the member or whether assessments shall be continued to be paid for the period of the life expectancy of the member according to the National Fraternal Congress Table of Mortality is one which affects the financial interest of every member of the Society and is a matter of great concern to each member of the Society.

In order that the payment of assessments shall be uniform, as suggested in the Green case, supra, the decisions of the home state of the corporation thereon should be controlling. In the Steen case, supra, the Supreme Court of Illinois, in interpreting the power of the defendant association in construing By-Law No. 66, determined that the assessments should be paid on Steen's certificate during his expectancy of life, according to the above named table, and in order that all members of the Society should be treated in a like manner the member Mixer and his beneficiary should be required to pay assessments during the time of Mixer's expectancy of life, according to the above named table.

In the Steen case, supra, the court in discussing the legal presumption of death from seven years unexplained absence (Rec., p. 28), said:

> "The legal presumption of death from 7 years' unexplained absence arose by analogy under two early English statutes, the one exempting from the penalty of bigamy any person whose husband or wife should be continuously beyond the seas or should absent himself or herself for the space of seven years together, and the other providing that persons in leases for lives who shall remain beyond the seas or absent themselves from the realm for more than 7 years shall, in the absence of proof to the contrary, be deemed naturally dead. That the rule in question is merely a rule of evidence is unquestioned. Stevenson v. Montgomery, 263 Ill. 93, 104 N. E. 1075, Ann. Cas. 1915C 112. It is so treated by all the textbook writers. It was a rule born of necessity, to prevent the prosecution for bigamy of a deserted spouse, on the one hand, and to

settle the property affairs of the absentee on the other hand. It grew up in England at a time when travel was fraught with every danger known to man and when means of communication were primitive. Since this rule of law was established the social aspects of our civilization have been almost revolutionized. The improbability that accident, injury, sickness or death could overtake a member of this society without information of the fact reaching his family and friends is very great. In case of need he scarcely could fail to find assistance among the million members of his own fraternity. Hospital, police, burial, and other records are collected and preserved in practically every state in this country and newspapers are published in every city and village, and except for the reasons for which the law was originally established there is now no sound reason for continuing the rule except that it has existed for so long a time that convenience makes it the best rule to follow where no other rule is established by statute or by agreement."

In the case of *Hartford Life Insurance Co. vs. Ibs*, 237 U. S. 662, the court reached the conclusion that it was error for the court of another state than that of the home state of a life insurance company issuing certificates on the assessment plan, to exclude a decree of the court of the home state by which it was adjudicated that the company had the right to make advances from its mortuary fund to pay death claims and to replenish the fund by collections from a subsequent assessment upon its members, in which case, speaking of the character of the mortuary fund from which death claims must be paid, the court (p 670) said:

"The fund was single, but having been made up of contributions from thousands of members their interest was common. It would have been destructive of their mutual rights in the plan of mutual insurance to use the mortuary fund in one way for claims of members residing in one state, and to use it in another way as to claims of members residing in a different state. To make advances replenished by assessments against those living in Connecticut, and to make advances without the right to replenish against those

living in Wisconsin, would have destroyed the very equality the assessment plan was intended to secure. Manifestly the question as to the ownership and proper administration of the fund could not be left at large for collateral decision in every suit on certificates held by those who had failed to pay the assessment. For whether the members of the 'Safety Fund Department' are regarded as occupying a position analogous to that of shareholders, or are treated as beneficiaries of trust property in the hands of the company, as trustee, in the state of Connecticut, the courts of that state had jurisdiction of all questions relating to the internal management of the corporation. *Selig vs. Hamilton*, 234 U. S., 652. *Mutual L. Ins. Co. vs. Harris*, 97 U. S. 336. *Condon vs. Mutual Reserve Fund Life Assn.*, 89 Md., 99. *Maguire vs. Mortgage Co.*, 203 Fed., 858."

The federal question raised in this case pertains to the applicability of the full faith and credit clause of the Constitution of the United States, and must be determined by the decision of the court of last resort of the state of its creation and domicile, which has the final decision of questions involving the validity of its constitution and by-laws. The court, therefore, should be controlled by the decisions of the home state of the corporation and must give full faith and credit to the decision of the Supreme Court of Illinois, the home state of the petitioner, holding that Section 66 of the by-laws, as amended, is valid and binding.

Respectfully submitted,

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